REMARKS

Claims 17, 20-25, 37 and 39 are pending in the application, with claims 17 and 37 being independent claims.

Withdrawal of previous rejections

Applicants note with appreciation the withdrawal of the rejections of claims 17-36 under 35 U.S.S. § 112, first paragraph; the rejection of claims 26-29 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No., 6,491,943 to Tsuju et al.; and the rejection of claims 17, 19-30, and 33-39 under 35 U.S.C. § 103(a) as being unpatentable over Hamaguchi et al. in view of Tsuji et al.

Request to withdraw Finality of Office Action

Pursuant to the guidelines presented in the Manual of Patent Examining Procedure (MPEP), Section 706.07(d), Applicants kindly request that the finality of the rejection of September 18, 2007 be withdrawn as being premature for the following reasons:

MPEP §706.07(a), entitled "Final Rejection, When Proper on Second Action," explains that "second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement …."

The Office Action asserts in the conclusion section on page 6 that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL."

In response, Applicants respectfully note that the amendments submitted on February 12, 2007 do not necessitate a new ground or rejection. In the amendment of February 12, 2007, independent claims 17 and 37 only have been amended to narrow the general benzimidazole-formula to the compounds of the Markush-Group "omeprazole, lansoprazole, pantoprazole, and rabeprazole. In the originally filed application, the benzimidazole compounds omeprazole, lansoprazole, pantoprazole, and rabeprazole were recited in dependent claim 19, which was considered by the Examiner. Claim 19 has been canceled in the previous response, consistent with the incorporation of its subject matter with claim 17.

Accordingly, the amendments did not add new embodiments to the claims, and all present claim embodiments should have been previously considered by the Examiner. Therefore, withdrawal of the finality of the Office Action is respectfully requested.

Response to new rejections under 35 U.S.C. § 102(b)

The Office Action rejects claims 17, 20-24, 37, and 39 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 4,863,958 to Belanger et al., hereafter "BELANGER". The Office asserts that BELANGER "teaches the use of omeprazole (column 35, lines 64-66) for the treatment of asthma and anaphylaxis (column 1, lines 18-22, columns 1, lines 30-32, and claim 4)".

Applicants respectfully note that BELANGER does not disclose all elements of the presently claimed invention. For example, BELANGER only discloses benzofuran-based compounds as useful therapeutic agents for the treatment of asthma and anaphylaxis. Benzofuran-based compounds, however, are a different class of chemical compounds with a different mechanism of action compared to the presently claimed benzimidazole-based compounds, i.e., omeprazole, lansoprazole, pantoprazole, and rabeprazol. The therapeutic efficacy of benzofuran-based compounds is due to their activity of inhibiting leukotriene

synthesis (see BELANGER column 1, lines 18-22)., while the compounds of the present invention inhibit the secretion of IgE-dependent histamine releasing factor (HRF).

Furthermore, BELANGER discloses several other drug types that may optionally be added as second active ingredient into the formulation. Next to many other drugs, BELANGER lists omeprazole as a possible additional ingredient and adds the explanation, that omeprazole is a known K^+/H^+ ATPase inhibitor with the ability to inhibit the secretion of gastric acid, referring to U.S. 4,255,431. BELANGER only considers the option of adding a variety of additional ingredients to benzofurane-derivatives. There is no disclosure in BELANGER that indicates that such combination was actually administered to anyone, or that such combination was ever even made. At best, the disclosure in BELANGER is a suggestion that the combination may be prepared if one desired to obtain a K^+/H^+ ATPase inhibitor effect.

Still further, BELANGER does not teach or suggest any anti-allergic activity of omeprazole and only considers its known anti-ulcer action. Accordingly, someone skilled in the art would not choose, guided by the teaching of BELANGER, omeprazole as an active ingredient in a composition for the treatment of histamine related problems such as allergic asthma.

Accordingly, BELANGER fails to teach or suggest that omeprazole inhibits the secretion of IgE-dependent histamine-releasing factor (HRF), and someone of ordinary skill in the art would not see the presently claimed invention as taught by the disclosure of BELANGER.

In view of the foregoing, Applicants respectfully request withdrawal of the 102(b) rejection over BELANGER.

The Office Action rejects claim 25 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,476,842 to Rubin, hereafter "RUBIN". The Office asserts that

"RUBIN teaches the use of a composition comprising omeprazole (column 14, lines 13-16) with anti-malaria compounds (column 13, lines 35-38)."

In response, Applicants respectfully note that RUBIN teaches the use of omeprazole only for a situation where the patient is on a cancer treatment with a maintenance dosage of a corticosteroid, see column 14, lines 1-4. RUBIN recommends the additional use of omeprazole for the reason that "corticosteroids are known to induce ulcers," see column 14, lines 15-16. Thus, RUBIN only teaches omeprazole use for treatment of ulcers.

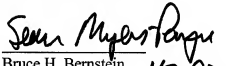
Applicants further respectfully note that claim 25 depends from claim 21, which depends from independent claim 17, and that each dependent claim incorporates by reference all of the elements of the claims from which it depends. Thus, Applicants respectfully note that claim 25 is not properly rejectable over RUBIN if claims 21 and 17 are not also rejected over RUBIN. Nothing in RUBIN suggests omeprazole for inhibiting secretion of IgE-dependent histamine-releasing factor (HRF) in a patient (claim 17) or for treatment of an allergic disease caused by HRF (claim 21), and thus, RUBIN cannot, without more, teach use of omeprazole for treatment of malaria.

In view of the foregoing, Applicants respectfully request withdrawal of the anticipation rejection over RUBIN.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully Submitted,
Chul-Hee LEE et al.



Bruce H. Bernstein
Reg. No. 29,027 42,920

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191